

# *COMMONWEALTH of VIRGINIA*

## *DEPARTMENT OF ENVIRONMENTAL QUALITY*

### *SOUTHWEST REGIONAL OFFICE*

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Secretary of Natural Resources

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David K. Paylor  
Director

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Regional Director

## **STATE WATER CONTROL BOARD ENFORCEMENT ACTION SPECIAL ORDER BY CONSENT ISSUED TO RUSSELL COUNTY DEVELOPMENT GROUP, LLC**

### **SECTION A: Purpose**

This is a Consent Special Order issued under the authority of Va. Code §§ 62.1-44.15 (8a) and (8d), between the State Water Control Board and Russell County Development Group, LLC for the purpose of resolving certain violations of the State Water Control Law and regulations.

### **SECTION B: Definitions**

Unless the context clearly indicates otherwise, the following words and terms have the meanings assigned to them below:

1. "Va. Code" means the Code of Virginia (1950), as amended.
2. "Board" means the State Water Control Board, a permanent citizens' board of the Commonwealth of Virginia as described in Va. Code §§ 10.1-1184 and 62.1-44.7.
3. "Department" or "DEQ" means the Department of Environmental Quality, an agency of the Commonwealth of Virginia as described in Va. Code § 10.1-1183.
4. "Director" means the Director of the Department of Environmental Quality.
5. "Order" means this document, also known as a Consent Special Order.
6. "Company" means Russell County Development Group, LLC, certified to do business in Virginia and its affiliates, partners, subsidiaries and parents.

7. "Facility" means the Gardenside Village Residential Development, located at Technology Park Drive, in Lebanon, Virginia.
8. "SWRO" means the Southwest Regional Office of DEQ, located in Abingdon, Virginia.
9. "Permit" or "VWP Permit" means Virginia Water Protection Permit, either an individual permit or coverage under the VWP General Permit. This project will be covered under a VWP General Permit, Authorization Number WP4-07-0017, which was issued April 12, 2007.
10. "NOV" means Notice of Violation.

**SECTION C: Findings of Facts and Conclusions of Law**

1. Russell County Development Group, LLC owns property located on Technology Park Drive in Lebanon, in Russell County. The Company is in the process of building a residential development, Gardenside Village Residential Development, to provide housing for employees anticipated for new businesses being built in Lebanon.
2. On June 27, 2006, DEQ staff members met on site with representatives of the Company and Annette Poore of the U. S. Army Corps of Engineers ("USACOE"). The purpose of this pre-application meeting was to discuss permitting requirements for the proposed Gardenside Village Residential Development. During this visit, DEQ staff noted that development of the site had begun. Approximately 150 linear feet of an unnamed tributary to Little Cedar Creek had been directed into a 24-inch culvert and the existing stream bed had been filled with excess spoil. DEQ staff advised the Company representatives that these impacts to state waters were unauthorized and suggested that all further construction activities in state waters cease until a VWP Permit could be obtained.
3. On January 22, 2007, DEQ staff members again met with representatives of the Company. The meeting was held to discuss deficiencies in the Company's Joint Permit Application ("JPA") received January 16, 2007, more than six months after the initial project meeting. The JPA was for a VWP Permit for the existing and proposed stream and wetland impacts resulting from development of the site. Following the meeting, a site visit was conducted. DEQ staff members observed that in addition to the 150 linear feet of stream that had been piped prior to the June, 2006 meeting, an additional 260 linear feet of the stream had been piped. Also, approximately 0.09 acre of wetlands had been filled in order to construct a roadway that is identified in the JPA as Club Court. These additional impacts were also unauthorized.

4. On January 29, 2007, an NOV was issued to the Company for the violations described in paragraphs 2 and 3 above. DEQ and Company officials met on February 12, 2007 to resolve the apparent violations.
5. The wetland delineation for the site was confirmed by the USACOE in October, 2006. A revised application and mitigation plan were received by DEQ on February 28, 2007. By letter dated March 9, 2007, DEQ deemed the application complete and accepted the conceptual mitigation plan. VWP General Permit Authorization No. WP4-07-0017 was issued April 12, 2007.
6. During a site visit May 2, 2007 to review the final mitigation plan, it was determined that impacts identified as temporary in the mitigation plan and plan sheets were, in fact, permanent in nature, and that other temporary impacts had occurred. Total wetland impacts increased from 0.69 acre to 1.28 acres. Utilizing the Unified Stream Methodology ("USM"), 377 linear feet of stream will require enhancement. Final wetland mitigation is in the form of an "in-lieu fee" for the total 1.28 acres of impact. Payment of \$83,200.00, the fee as determined by the USACOE, was received and accepted by The Nature Conservancy on June 6, 2007. Restoration will be required for all temporary impacts.
7. The State Water Control Law, at § 62.1-44.5, states "Except in compliance with a certificate issued by the Board, it shall be unlawful for any person to: 1. Discharge into state waters sewage, industrial wastes, other wastes, or any noxious or deleterious substances; 2. Excavate in a wetland; 3. Otherwise alter the physical, chemical or biological properties of state waters and make them detrimental to the public health, or to animal or aquatic life, or to the uses of such waters for domestic or industrial consumption, or for recreation, or for other uses; or 4. On and after October 1, 2001, conduct the following activities in a wetland: a. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; b. Filling or dumping; c. Permanent flooding or impounding; or d. New activities that cause significant alteration or degradation of existing wetland acreage or functions".
8. Regulation 9 VAC 25-210-50, states "Except in compliance with a VWP permit, no person shall dredge, fill or discharge any pollutant into, or adjacent to surface waters, or otherwise alter the physical, chemical or biological properties of surface waters, excavate in wetlands, or on or after October 1, 2001, conduct the following activities in a wetland: 1. New activities to cause draining that significantly alters or degrades existing wetland acreage or functions; 2. Filling or dumping; 3. Permanent flooding or impounding; or 4. New activities that cause significant alteration or degradation of existing wetland acreage or functions".

9. The State Water Control Law addresses Virginia Water Protection Permits, stating at § 62.1-44.15:5.D that "Except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall be unlawful to excavate in a wetland. On and after October 1, 2001, except in compliance with an individual or general Virginia Water Protection Permit issued in accordance with this subsection, it shall also be unlawful to conduct the following activities in a wetland: (i) new activities to cause draining that significantly alters or degrades existing wetland acreage or functions, (ii) filling or dumping, (iii) permanent flooding or impounding, or (iv) new activities that cause significant alteration or degradation of existing wetland acreage or functions".
10. By impacting 410 linear feet of stream and 1.28 acres of wetlands prior to coverage under an individual or general VWP Permit, the Company has violated the statutory and regulatory provisions cited in paragraphs C.7, 8 and 9 above.

**SECTION D: Agreement and Order**

Accordingly the Board, by virtue of the authority granted it pursuant to Va. Code § 62.1-44.15 (8a) and (8d), orders the Company, and the Company agrees, to perform the actions described in Appendix A of this Order. In addition, the Board orders the Company, and the Company voluntarily agrees to pay a civil charge of \$23,400.00 within **30 days** of the effective date of the Order in settlement of the violations cited in this Order. Payment shall be made by check or money order payable to the "Treasurer of Virginia", and delivered to:

Receipts Control  
Department of Environmental Quality  
Post Office Box 1104  
Richmond, Virginia 23218

Either on a transmittal letter or as a notation on the check or money order, the Company shall indicate that this payment is submitted pursuant to this Order and shall include the Company's Federal Identification Number.

**SECTION E: Administrative Provisions**

1. The Board may modify, rewrite, or amend the Order with the consent of the Company, for good cause shown by the Company or on its own motion after notice and opportunity to be heard.

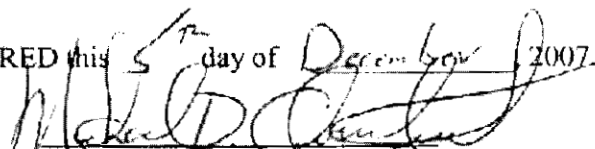
2. This Order addresses only those violations specifically identified herein. This Order shall not preclude the Board or Director from taking any action authorized by law, including, but not limited to: (1) taking any action authorized by law regarding any additional, subsequent, or subsequently discovered violations; (2) seeking subsequent remediation of the Facility as may be authorized by law; and/or (3) taking subsequent action to enforce the terms of this Order. This Order shall not preclude appropriate enforcement actions by other federal, state, or local regulatory authorities for matters not addressed herein.
3. For purposes of this Order and subsequent actions with respect to this Order, the Company admits the jurisdictional allegations contained herein. The Company neither admits nor denies the factual findings and conclusions of law contained herein.
4. The Company consents to venue in the Circuit Court of the City of Richmond for any civil action taken to enforce the terms of this Order.
5. The Company declares it has received fair and due process under the Administrative Process Act, Code § 2.2-4000 *et seq.*, and the State Water Control Law, and it waives the right to any hearing or other administrative proceeding authorized or required by law or regulation, and to judicial review of any issue of fact or law contained herein. Nothing herein shall be construed as a waiver of the right to any administrative proceeding for, or to judicial review of, any action taken by the Board to enforce this Order.
6. Failure by the Company to comply with any of the terms of this Order shall constitute a violation of an Order of the Board. Nothing herein shall waive the initiation of appropriate enforcement actions or the issuance of additional orders as appropriate by the Board or the Director as a result of such violations. Nothing herein shall affect appropriate enforcement actions by any other federal, state or local regulatory authority.
7. If any provision of this Order is found to be unenforceable for any reason, the remainder of the Order shall remain in full force and effect.
8. The Company shall be responsible for failure to comply with any of the terms and conditions of this Order unless compliance is made impossible by earthquake, flood, other act of God, war, strike, or such other occurrence. The Company must show that such circumstances resulting in noncompliance were beyond its control and not due to a lack of good faith or diligence on its part. The Company shall notify the Director of the SWRO in writing when circumstances are anticipated to occur, are occurring, or have occurred that may delay compliance or cause noncompliance with any requirement of this Order. Such notice shall set forth:

- a. the reasons for the delay or noncompliance;
- b. the projected duration of such delay or noncompliance;
- c. the measures taken and to be taken to prevent or minimize such delay or noncompliance; and
- d. the timetable by which such measures will be implemented and the date full compliance will be achieved.

Failure to notify by phone the Director of the SWRO within 24 hours of learning of any condition listed above, which the Company intends to assert will result in the impossibility of compliance, shall constitute waiver of any claim of inability to comply with a requirement of this Order.

9. This Order is binding on the parties hereto, their successors in interest, designees, and assigns, jointly and severally.
10. Any plans, reports, schedules or specifications attached hereto or submitted by the Company and approved by the Department pursuant to this Order are incorporated into this Order. Any non-compliance with such approved documents shall be considered a violation of this Order.
11. This Order shall become effective upon execution by both the Director or his designee and the Company. Notwithstanding the foregoing, the Company agrees to be bound by any compliance date which precedes the effective date of this Order.
12. This Order shall continue in effect until the Director or Board terminates the Order in his or its sole discretion upon 30 days written notice to the Company. Termination of this Order, or any obligation imposed in this Order, shall not operate to relieve the Company from its obligation to comply with any statute, regulation, permit condition, other order, certificate, certification, standard, or requirement otherwise applicable.
13. The undersigned representative of the Company certifies that he or she is a responsible official authorized to enter into the terms and conditions of this Order and to execute and legally bind the Company to this document. Any documents to be submitted pursuant to this Order shall also be submitted by a responsible official of the Company.
14. By its signature below, the Company voluntarily agrees to the issuance of this Order.

And it is so ORDERED this 5<sup>th</sup> day of December, 2007.

  
Michael D. Overstreet, Regional Director  
Department of Environmental Quality

Russell County Development Group, LLC voluntarily agrees to the issuance of this Order.

Name: \_\_\_\_\_

  
Mr. Jerry Bond

Title: \_\_\_\_\_

President  
President

Date: \_\_\_\_\_

20 Dec 07

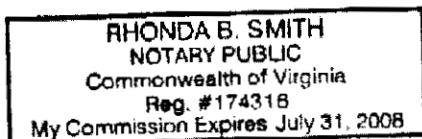
State of Virginia


City/County of Russell

The foregoing instrument was acknowledged before me this 20 day of Aug, 2007,

by Jerry Bond, who is President of Russell County Development  
(name) (title)

Group, LLC, on behalf of Russell County Development Group, LLC.



  
Notary Public

My commission expires:

09-31-08

#### APPENDIX A

In order to comply with the provisions of the State Water Control Law and Regulations and the Permit issued, the Company agrees to implement the following actions by the dates noted below:

1. The Company shall report to the SWRO any unauthorized discharges, unusual or extraordinary discharges, or any noncompliance which may adversely affect state waters or may endanger public health immediately upon discovery (within 24 hours).
2. The Company shall maintain all temporary control structures in place until completion of construction of permanent structures.
3. The Company shall comply with the final mitigation plan upon approval. Part II.A.7 of the VWP General Permit, Authorization Number WP4-07-0017, which was issued April 12, 2007 for the Facility, requires that approval of a final compensation plan be obtained prior to any additional construction activities in permitted impact areas. The final mitigation plan has been submitted, but not yet approved. In agreement with the final mitigation plan submitted, 377 linear feet of stream will require enhancement. Restoration to original condition will be required for all temporary impacts. The final mitigation plan does include a schedule for implementation and completion of all mitigation activities. Upon approval, the final mitigation plan will become an enforceable part of this Order. The Company shall respond to DEQ comments in a timely manner and secure approval of the final mitigation plan on or before **August 30, 2007**.
4. The Company shall submit quarterly reports detailing progress and present status of the mitigation plan. The first report will be due **October 10, 2007**, with subsequent reports due **January 10, April 10, July 10 and October 10** of each year, until completion of the mitigation plan is achieved.
5. All reports to be submitted to the SWRO shall be mailed to the attention of Ruby Scott, Compliance Auditor, P. O. Box 1688, Abingdon, VA 24212.
6. None of the above items modify or change the VWP General Permit, Authorization Number WP4-07-0017, which was issued April 12, 2007 for the Facility, and all requirements of the Permit shall remain in effect.